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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,517	06/28/2001	Ralf Wolleschensky	GK-ZEI-3099/500343.20099	8222

7590

05/05/2003

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EXAMINER

PRITCHETT, JOSHUA L

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 05/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/895,517

Applicant(s)

WOLLESCHEFSKY ET AL.

Examiner

Joshua L Pritchett

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "and/or" in line 7. The term "and/or" does not enable the examiner to readily determine the metes and bounds of the claim, because the term does not clearly delineate the claimed subject matter. Claims 2-47 are dependent on claim 1 and inherit the deficiencies thereof.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 7, 10, 14, 20, 21, 24, 25, 26, 32, 42, 43, 45, 48, 52, 55, 62, 63, 66, 67, 68, 74, 83, and 84 rejected under 35 U.S.C. 102(b) as being anticipated by Yang (US 5,859,700).

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Claims 1-3, 7, 10, 14, 20, 21, 24, 25, 26, 32, 42, 43, 45, 48, 52, 55, 62, 63, 66, 67, 68, 74, 83, and 84 are rejected for the same reasons disclosed in the Previous Office Action (Paper No. 6) on pages 5-7.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4-6, 8, 9, 13, 15, 17-19, 49-51, 53, 54 and 58-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Okubo (EP 463 600).

Claims 4-6, 8, 9, 13, 15, 17-19, 49-51, 53, 54 and 58-61 are rejected for the same reasons disclosed in the Previous Office Action (Paper No. 6) on pages 7-9.

Claims 11, 12, 27, 56, 57, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Lee (US 5,737,077).

Claims 11, 12, 27, 56, 57 and 69 are rejected for the same reasons disclosed in the Previous Office Action (Paper No. 6) on pages 9-10.

Claims 22, 23, 64 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Okubo as applied to claims 8 and 53 above, and further in view of Hochman (US 6,319,682).

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Claims 22, 23, 64 and 65 are rejected for the same reasons disclosed in the Previous Office Action (Paper No. 6) on page 10.

Claims 28-30, 34, 70-72, and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Kash (US 6,342,701).

Claims 28-30, 34, 70-72 and 76 are rejected for the same reasons disclosed in the Previous Office Action (Paper No. 6) on pages 10-11.

Claims 35, 39, 41, 44, 46, 77, 81, 82, 85, and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Simon (US 6,356,088).

Claims 35, 39, 41, 44, 46, 77, 81, 82, 85 and 86 are rejected for the same reasons disclosed in the Previous Office Action (Paper No. 6) on pages 11-12.

Claims 33, 36, 37, 38, 40, 47, 75, 78, 79 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Yagi (US 5,986,256).

Claims 33, 36, 37, 38, 40, 47, 75, 78, 79 and 80 are rejected for the same reasons disclosed in the Previous Office Action (Paper No. 6) on pages 12-13

Claims 31 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Tuunanen (US 6,084,680).

Claims 31 and 73 are rejected for the same reasons disclosed in the Previous Office Action (Paper No. 6) on page 13.

Response to Arguments

Applicant's arguments filed March 28, 2003 in Paper No. 9 have been fully considered but they are not persuasive.

On page 9 of Amendment A applicant argues that Yang does not teach the determination of a centroid. The examiner disagrees Yang clearly teaches the determination of a central value in the absorption spectrum (col. 12 lines 53-54). The determination of a central value is considered to be the same as a centroid.

On page 10 of Amendment A applicant argues that Yang is not confocal. This limitation does not appear in any of the claims rejected by solely by Yang and therefore this argument is moot.

On page 10 of Amendment A applicant argues that Yang does not have a dispersive element. The examiner admits that Yang does not have a dispersive element, however a dispersive element is taught by Okubo and all claims pertaining to the inclusion of a dispersive element are rejected under 35 U.S.C 103(a) as unpatentable over Yang in view of Okubo.

On page 10 of Amendment A applicant argues that Yang and Okubo are not similar fields of endeavor. The examiner disagrees because both Yang and Okubo use emitted light to analyze the subject specimen. Therefore the combination of Yang and Okubo would be recognized by a person of ordinary skill in the art as being obvious.

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On pages 10-11 of Amendment A applicant argues that Okubo does not teach the same calibration technique used in the present invention. The limitation of calibration technique does not appear in the claim limitation therefore the argument is moot.

On page 11 of Amendment A the applicant argues that Lee does not use resistors to determine the centroid. The examiner disagrees; Lee discloses several computer chips, which inherently have some resistance, cascaded together to form a weighted summing circuit (col. 15 lines 38-41).

On page 11 of Amendment A the applicant argues that Hochman teaches a look up table that is different than the present invention. The differences in the Hochman look up table and the look up table of the present invention are not in the claims and therefore the argument is moot.

On pages 11-12 of Amendment A the applicant argues that Kash does not teach determination of a centroid. The claim limitation of determining a centroid has been previously been taught by the Yang reference and therefore the Kash reference is not required to teach determination of a centroid in order to have the claim language read upon the Yang and Kash references.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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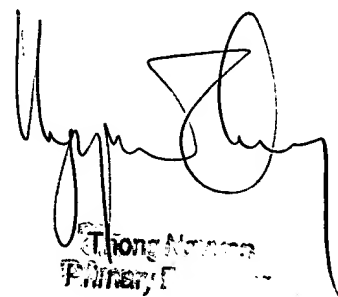
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua L Pritchett whose telephone number is 703-305-7917. The examiner can normally be reached on Monday - Friday 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cassandra Spyrou can be reached on 703-308-1687. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

JLP
April 25, 2003



Joshua L Pritchett
Examiner, I